

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2015120864

v.

POWAY UNIFIED SCHOOL DISTRICT,

POWAY UNIFIED SCHOOL DISTRICT,

OAH Case No. 2015100240

v.

PARENT ON BEHALF OF STUDENT.

ORDER FOLLOWING PREHEARING
CONFERENCE AND GRANTING
MOTION TO CONSOLIDATE AND
GRANTING MOTION TO CONTINUE

On January 8, 2016, a telephonic prehearing conference was held before Administrative Law Judge Caroline A. Zuk, Office of Administrative Hearings. Kristin Myers, Attorney at Law, appeared on behalf of Poway Unified School District. Seth Schwartz, Attorney at Law, appeared on behalf of Student. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

Motion to Consolidate

On October 2, 2015, District filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2015100240 (District's Case), naming Student.

On December 18, 2015, Student filed a Request for Due Process Hearing in OAH case number 2015120864 (Student's Case), naming District.

On January 5, 2016, the parties filed a joint Motion to Consolidate both cases and to continue the due process hearing.

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or

preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Here, District's Case and Student's Case involve a common question of law or fact, specifically involving the appropriateness of District's IEP's, dated April 22, May 13, May 27, June 3, and September 17, 2015. Accordingly, consolidation is granted.

Motion to Continue

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).)

The parties' joint motion to continue the initially set dates in Student's case demonstrates good cause for a continuance, including the parties' calendaring conflicts, and is hereby granted. The Mediation in the consolidated cases shall be held on January 27, 2016, at 9:30 a.m., the Prehearing Conference in the consolidated cases shall be held on March 14, 2016, at 10:00 a.m., and the Due Process Hearing in the consolidated cases shall be held on March 23, 24, 28, 29 and 30, 2016, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 4:30 p.m. with the exception of the first day of hearing on which day the hearing shall begin at 9:30 a.m., and on Mondays, on which days the hearing shall begin at 1:30 p.m., unless otherwise ordered.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE

SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

ORDER

1. The parties' joint Motion to Consolidate is granted.
2. The parties' joint Motion to Continue is granted and all dates previously set in District's and Student's Cases are vacated. The Mediation in the consolidated cases shall be held on January 27, 2016, at 9:30 a.m., the Prehearing Conference in the consolidated cases shall be held on March 14, 2016, at 10:00 a.m., and the Due Process Hearing in the consolidated cases shall be held on March 23, 24, 28, 29 and 30, 2016, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 4:30 p.m. with the exception of the first day of hearing on which day the hearing shall begin at 9:30 a.m., and on Mondays, on which days the hearing shall begin at 1:30 p.m., unless otherwise ordered.
3. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2015120864 (Student's Case).

DATE: January 08, 2016

/s/

CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings